

522-09/MFM
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIANE BROZYNA and ZYGMONT BROZYNA
77 Queens Drive
West Seneca, NY 13224

Plaintiffs,

- against -

NIAGARA GORGE JETBOATING, LTD.,
61 Melville Street
Niagara on the Lake, Ontario, Canada L0S 1J0

Defendant.

10 CIV. 602-A (RJA)

DECLARATION OF JOHN KINNEY

I, JOHN KINNEY, declare:

1. I am the President and part owner of NIAGARA GORGE JETBOATING, LTD. (d/b/a WHIRLPOOL JET). Whirlpool Jet operates a whitewater jet boating excursion on the Niagara River.

2. The whitewater excursion tours are conducted aboard a fleet of eight (8) diesel driven jet boats which were specifically designed and engineered for whitewater conditions on the Niagara River. One of the primary attractions and highlights of the excursions is the Class 5 rapids in areas of the Niagara River, such as the "Devil's Hole" and the "Whirlpool."

3. The whitewater excursions conducted by Whirlpool Jet depart at various intervals throughout the day and are conducted from May through October. Niagara Gorge's Boats operate out of Niagara-on-the-Lake, Ontario, Niagara Falls, Ontario and Lewiston, New York. The boats return to the same port from which they departed at the completion of the excursion.

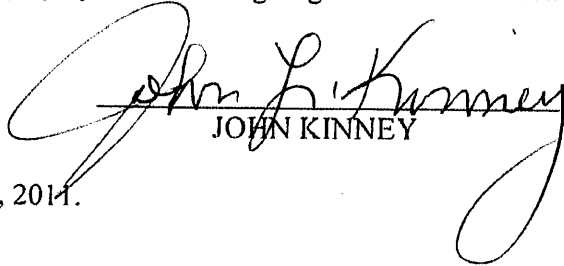
4. Prior to boarding the respective boats, as a matter of company policy, all participants are required to participate in a detailed and extensive pre-trip meeting conducted by a Niagara Gorge employee. During the course of that safety briefing, participants are provided with a description of the excursion and are expressly warned as to potential risks associated with whitewater jet boating. Participants are expressly warned that they will be experiencing Class 5 rapids on the excursions and are also warned about participating if they have any neck, back, and/or heart conditions. Participants are further warned that they will be experiencing rougher conditions if they elect to sit in the first three (3) rows of the boat. Finally, the participants are instructed as to how to position themselves as the boat transits the rapids.

5. In addition to the pre-boarding safety briefing, Niagara Gorge Jetboating also provides a continuous videotape presentation in its ticket offices depicting conditions encountered by the boats during the course of the whitewater excursion. Niagara Gorge Jetboating also maintains a website in which it provides an overview of the whitewater excursion, and which contains both still photos as well as video clips of its boats while in the rapids. Color copies of various representative photos printed from Whirlpool Jet's website depicting its boats in the rapids are attached as Exhibit "1" hereto. Whirlpool Jet's website can

be accessed at <http://www.whirlpooljet.com>. A DVD of the continuous videotape presentation that was running in our Lewiston, New York ticket office on the day of Plaintiff's accident is attached as Exhibit "2" hereto. The video presentation is also available on our website.

6. As a condition to participating in the excursion, each participant is required to sign and initial a Whirlpool Jet "Participation Agreement." A copy of Whirlpool Jet's standard "Participation Agreement" is attached hereto as Exhibit "3".

I declare under the penalty of perjury that the foregoing is true and correct.


JOHN KINNEY

Executed on the 8th day of February , 2014.